

Remarks

This is in response to the Office Action dated **May 11, 2010**.

Claims 3, 6-8, 23-25, and 26 have been newly rejected as obvious over Morgan (US 4905679) in view of Wevers (US 4444181). The rejection is traversed.

The Examiner proposes a modification of the Morgan's devices to have legs arranged in the manner of Wevers with a pair of legs are provided symmetrically about a line with each leg having a point of weakness and prior to deformation the transverse distance between the outer connecting portions is about the same as an outer diameter of an annulus. The reason offered for the proposed modification is that the structure would provide for easier crimping due to the necked portion. It is clear from reading Morgan in its entirety, however, that a skilled person would not have reached the same conclusion.

Morgan was specifically aware of Wevers. Wevers is discussed "Background of the Invention" at column 2, lines 42- 59.

In U.S. Pat. No. **4,441,181** granted to H. S. *Wevers* et al there has been disclosed a bone clip for the surgical repair of bones with the clip having body portions with spaced parallel connecting legs at each side thereof. The clip is designed for use in surgically straightening a bone. A V-notch is cut into the bone and pin holes are drilled into the bone on each side of the notch to receive legs depending from the body portions of the clip at each end thereof. After insertion of the clip legs into the pin holes, the spaced parallel legs are deformed inwardly so as to draw the legs together towards each other to force closure of the V-notch cut into the bone and thereby straighten such bone. ***The Wevers et al bone clip provides no positive connection of the clip to the bone as by threaded bone screws and there is no elongated support to the bone so as to avoid flexure because there is only one connection point of the clip (depending leg) on each side of the cut V-notch.***

Rather than believing that the notched leg pair of Weavers provided an expected advantage, Morgan teaches that notched connector system of Weavers is unsatisfactory and so this provides a reason to avoid producing a modified structure that included that feature. Morgan instead

teaches a device which has legs with "uniform cross section throughout its length" (claim 1).

35 USC §103(a) allows rejection if the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. Given that: Morgan knew of Wevers and yet Morgan in his patent did not arrive at the present invention; and, on the face of it Morgan, being an inventor, is arguably a person of skill higher than "ordinary skill," the applicant submits that Morgan on its face indicates that the present invention would not be obvious. Further, Morgan appears to teach directly against Wevers and accordingly we submit that the manner in which the Office Action combines the references has clearly been tainted by impermissible hindsight. Morgan, when setting out to develop a bone fracture reduction device in the full knowledge of Wevers, but without the benefit of knowing the present invention (and thus is not in a position to use hindsight) did not arrive at the present claimed invention.

Furthermore, Morgan Fig. 1 does not in fact show a structure with two "annuli being located relative to each other so that their respective outer radii touch or overlap" as asserted in the Office Action. Reference is made to the figure below, in which three copies of the figure, displaced longitudinally, have been superimposed transparently to show the outer edges of the annuli of the underlying figure.



Additionally with regard to claim 24, "the connecting members join the respective annuli from which they extend on a circumference of the annuli," is not provided in the alleged combination. Wevers has no annuli and the connecting members of the Morgan structures do not extend from the circumference of an annuli.

At least for the reasons given above, the applicant requests withdrawal of the rejection of claims

Information Disclosure

Applicant encloses herewith two technical papers of Wright Medical Technology, Inc., and copies of US 2006/0081553 and US 2006/0058796, both of the same party. Upon withdrawal of the outstanding final rejection, consideration is requested. The fee set forth in 37 CFR 1.17 (p) may be charged at the time of consideration to Deposit Account No. 22-0350, if due. The publication date of the documents is not known but they have a copyright notice of 2006 so they are not believed to be prior art. The present application has an international filing date of January 7, 2005. With regard to the published applications the applicant believes he invented the subject matter of the present claims before the priority dates of these documents. Embodiments with two annuli (each fixing portion having one annulus) are disclosed and constructively reduced to practice in the priority applications of record in this case which have filing dates of 8 January 2004 and 3 February 2004, before the effective reference dates of US 2006/0081553 and US 2006/0058796 (earliest claimed is Sep. 14, 2004). These applications also teach that the devices "could also have more than two annuluses. (See *e.g.*, AU application 2004900460, Figs 1-5 and pg 5; AU application 2004900432, Figs 1-4 and pg 4). Consequently US 2006/0081553 and US 2006/0058796 are not seen to be prior art.

Respectfully submitted,
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US 2006/0081553

US 2006/0058796